

September 18, 2007

**TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Marilyn Praisner, President	
Councilmember Michael KnappVicePresident	
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	

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Council President Praisner,

Ladies and gentlemen, we are going to begin with a moment of silence this morning. If you would please stand. Thank you. We have one presentation this morning. A Proclamation in recognition of Constitution Week by Council Vice-President Knapp.

Councilmember Knapp,

Thank you Madam President. As I speak to our multitudes here, throng as it were, I am joined this morning by Patricia Johnson who is President of the Goshen Mills Chapter of the Daughters of the American Revolution. Thank you very much for coming in. I was going to make a few remarks. I don't have anywhere near the eloquence nor the ability to speak as extemporaneously as our prior colleague Mr. Denis did, but I wanted to make just a couple of remarks on the Constitution this morning in recognition of the 220th anniversary of the signing of that document. As I think everyone knows, 220 years ago this week in Philadelphia, 55 men including 5 Marylanders completed their work on the U.S. Constitution. We are honored to also have the husband of one of our Councilmembers, David Stewart, husband of Ms. Floreen who just authored a book called *The Summer of 1787* which is available now in bookstores near you. But I think it's important for us to take a moment to remember that we in our state, which was not then a state but colony played a significant role in the Constitution. In September of 1786 commissioners from five states met in Annapolis to discuss adjustments to the Articles of Confederation, namely to improve commerce. That Annapolis Convention, so called, was something of a bust but it actually started the seed for the reexamination of the, looking at the Articles of Confederation which then took place further in Philadelphia. 39 of the original 55 delegates to Philadelphia signed the Constitution including 3 Marylanders. Despite our split delegation though, we had five and only three signed, Maryland was quick to ratify the Constitution, the 7th state to do so, completing action in April 1788 back in Annapolis where the whole thing started with a vote of 63 to 11. We can rightly be proud in Maryland's role of drafting the Constitution but this was a national effort as well. And like all Marylanders and all Americans we take a moment this week to honor our humble beginnings and those men and yes, women, who helped craft one of the sturdiest and most successful documents of all time. There's a story often told that upon exiting the Constitutional Convention Benjamin Franklin was approached by a group of citizens asking what sort of government the delegates had created. His answer was a republic if you can keep it. The brevity of that response should not cause us to underestimate its meaning. Democratic republics are not merely founded upon the consent of the people. They are also absolutely dependant upon the active and informed involvement of the people for the continued good health. And as we know, we in Montgomery County have a very active government and a very active group of people who participate in it. The Constitution requires our constant diligence, not as lawmakers, but in our most important role as citizens of government. Let us take a moment to reflect on that role as well as on those who founded our government and perhaps most important those who have given their

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lives to defend it. And I am pleased and honored each year the Goshen Mills Chapter of DAR calls my office to remind me that it is in fact Constitution Week and that we need to have a Proclamation. And so I am joined by Patricia Johnson here today to present this Proclamation on behalf of the County Council. It is a proclamation that, whereas the Constitution of the United States embodies the ideas and principles of our founding fathers, supplemented the wisdom that has been reflected in our dynamic republic over two centuries. And whereas this fall marks the 220th anniversary of the framing of our Constitution by the 1787 Constitutional Convention. And whereas the Constitution has not only embodied the hopes and aspirations of Americans for liberty and representative government but also has inspired people seeking freedom the world over. Now therefore, be it resolved that the Montgomery County Council recognizes the 220th anniversary of the United States Constitution and urges constant vigilance of County residents in protecting our liberties and rights for generations of Americans still to come. Signed on this 18th day of September in the year 2007, Marilyn Praisner, Council President. Thank you very much.

Patricia Johnson,
[applause] Thank you very much.

Councilmember Knapp,
Thank you.

Patricia Johnson,
This is not just the Goshen Mills --.

Council President Praisner,
You want to go up closer to the mic so everyone can hear you.

Patricia Johnson,
This is not just the Goshen Mills Chapter of DAR that does this, this is done all over the country. We have over 168,000 members and 3,000 chapters and they all remind the public of the Constitution. We sponsor special programs and public services during this week, Constitution Week. And we commemorate the Constitution Week to help inform and remind the public about this document, the Constitution, which is fundamental to our society.

Councilmember Knapp,
And we thank you very much for doing it and for all the work that the Daughters of the American Revolution takes each year to remind us of those things we should all never forget.

Patricia Johnson,
Thank you.

Councilmember Knapp,

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Thank you very much Patricia.

Council President Praisner,
[multiple voices] Good point.

Councilmember Knapp,
Alright. Thank you very much.

Council President Praisner,
Okay. Thank you very much. Councilmember Leventhal has a point of personal privilege.

Councilmember Leventhal,
Thank you Madam President. I just wanted to bring to my colleagues attention that last week Elnora Harvey passed away. She was well known to many of us. She was a longtime member of the Silver Spring Citizen's Advisory Board, also has served for a number of years on the Montgomery County Democratic Central Committee. Very active community resident. Very opinionated. Very much in touch with all of us. I know she had multiple myeloma, her family was with her when she passed away last week. The funeral will be this Saturday.

Council President Praisner,
Thank you, George. When I heard it I thought the same thing. Very sad news. And somehow the Constitution Week reference and Elnora kind of go together as well because she was very passionate about having people have the right to exercise their views and to participate in the full breadth of what is being a resident of Montgomery County. So, thank you George for your comments. Announcements, Agenda and Calendar Changes, Madam Clerk.

Linda Lauer,
Just a couple of committee changes. The MFP Committee this afternoon is canceled and then next Tuesday we do have a little change on the, for the Council's plans that day. MFP meeting will be held in the morning at 9:30. The Council session will only be held in the afternoon and we will get the details of that out to you later. But I just wanted you to know about that. The MFP meeting that morning is the one on the development districts issue and it's available for all Councilmembers to attend if they want. Thank you.

Councilmember Knapp,
That's televised too, right?

Council President Praisner,
It would be, it was planned to be televised. We are just flipping the two meetings to accommodate participant in our afternoon Council session. There are no petitions, I have been told. So, we'll move to Approval of Minutes, Madam Clerk.

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Council Clerk:
We have the minutes of July 31st for approval today.

Council President Praisner,
Is there a motion? Councilmember Andrews. Is there a second? Councilmember Ervin. All in favor of the Approval of Minutes? That is unanimous among those present. We'll move to the Consent Calendar. Is there a motion?

Councilmember Knapp,
So moved.

Council President Praisner,
Council Vice-President Knapp. Is there a second?

Councilmember Berliner,
Second.

Councilmember Knapp,
Not today.

Council President Praisner,
No seconds, no consent. Councilmember Berliner. Are there items that Councilmembers would like to pull or comments that Councilmembers would like to make? I wanted – I'm sorry, George, Councilmember Leventhal.

Councilmember Leventhal,
Yeah, I just wanted to comment that the Health and Human Services Committee has favorably recommended to the full Council the appointment of David Jones to be Chief of Behavioral Health and Crisis Services. We are in a time where the urgency I think of our mental health agenda is much on everyone's minds and we look forward to working closely with Mr. Jones with the Director of HHS, Ms. – and with County Executive Leggett as we seek to persuade the Maryland General Assembly and the governor to place mental health higher on the state's agenda and I think Mr. Jones is the right person at the right time and we look forward to working with him.

Council President Praisner,
Any other comments? I had one on item number one or A I should say, the Supplemental appropriation for the U.S. 29 Sidewalks. The packet doesn't have Circles on it, Glenn, but on the one for the PDF, that's number 509997, the PDF, reference is made, as I wanted to make clear folks knew, to the fact that the original intent of the sidewalks given the traffic and limited pedestrian access in a variety of places was both for the east and west side and this only deals with the east side of 29. So, at some point we'll have to be coming back to the issue of the west side. Both of which are challenging because of the limited, the topography as well as the limited access. The other point I guess I wanted to

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make is at some point I'd like us to discuss, meaning the T&E Committee has, the state's role in pedestrian, in sidewalks on what may be state roads but are certainly not limited access highways. And while the County has an MOU with the state for some contribution, I think we need to continue to look at the state not only for reviewing their participation in these kinds of issues but beyond the sidewalk issue, the lighting issue on state highways I believe is a problem and their policy is somewhat inconsistent with more neighborhood developed areas in the County and in other counties. Councilmember Floreen.

Councilmember Floreen,

Well, you're so right, Madam President. But, as I think the governor is briefing the General Assembly on the issues today, it's a matter of cash for sidewalk funding along with all the other issues in the highway trust fund which even in Maryland is yet to be repaid. So, it's an important challenge. I think we have taken up the lighting issue previously and again they have, we have actually been working on that. Councilmember Ervin and I have been working with Kensington on this very issue and it's, again, it's a question of allocation of resources and various arcane agreements frankly that don't always suit our communities as well as they should. So, we'll keep working on it.

Council President Praisner,

Well, I appreciate that and obviously where there are municipalities there is always three-way partnership but in most of the County there are not municipalities and the issue I was talking about is also, in addition to the funding, their policy about the frequency of street lights which tends to, I think, be inconsistent again with suburban and urban areas where we put sidewalks and encourage people to walk and then it's very limited as far as the ability to traverse that area safely. So I hope we can continue to pursue that. Having chatted with the governor last week about some of his initiatives, he continues to believe that the transportation trust fund, if only for bridges but in other areas, needs replenishment and I believe we will see something coming from him if not tomorrow, maybe in the next few days related to that unless he believes he's already made that statement. Glenn.

Glenn Orlin,

Well, we'll do some research on that. On your first point Ms. Praisner, I know you know this and Ms. Floreen knows this, the other Councilmembers may not. There is a separate project in the CIP for the sidewalks on the west side of U.S. 29 although it's a couple of years further behind this one. So, it will be coming forward in the next couple of years.

Council President Praisner,

Right. And that was the point. I was just trying to remind people that this is only phase one.

Glenn Orlin,

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Right.

Council President Praisner,
Okay. We have the Consent Calendar in front of us. I see no other lights. All in favor of approval of the Consent Calendar? That is unanimous. Thank you. We will now move to the item for Action and Confirmation of the County Executive's appointment to the Washington Suburban Sanitary Commission, Mr. Norman Pruitt. Are there any motions?

Councilmember Ervin,
So moved.

Council President Praisner,
Councilmember Ervin --.

Councilmember Leventhal,
Second.

Council President Praisner,
--has moved the confirmation of Mr. Pruitt. Second by Councilmember Leventhal.
Councilmember Leventhal.

Councilmember Leventhal,
Actually, is Mr. Pruitt here this morning?

Council President Praisner,
I don't believe so.

Councilmember Leventhal,
Okay. Well, I've known Mr. Pruitt for a number of years. He's an experienced administrator at the U.S. Department of Agriculture. He's worked with universities around the country and is an experienced management consultant. I think County Executive Leggett has made an excellent choice here. We had a very good conversation with Mr. Pruitt yesterday and I think he understands the challenges that are currently facing the Washington Suburban Sanitary Commission and I'm very pleased to support his nomination to be one of our Montgomery County Commissioners.

Council President Praisner,
I see no other comments. I would join my colleagues in support of Mr. Pruitt. He has stepped forward to assume a significant responsibility as far as the County is concerned. We look forward to working with him on the challenges of a management of a bi-county agency. All in favor of the appointment of Mr. Pruitt please indicate? It is unanimous. Thank you all very much. We are now going to move, I don't know if staff is here as yet, for a briefing on the issues of rezoning process and ex parte communication. Is Francoise due as well? Why don't we

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take a five minute break and come back and make sure Francoise and everybody else is here. Okay, since this is supposed to start at 10:00 anyway, let's begin this at 10:00. Thank you. It's a little after 10:00. We'll start again. I just want to set the stage a little bit. You also should have just received a memo from Marty Klauber, which the packet talks about the process for the zoning and Hearing Examiner and the Planning Board and I thought with the issue of the people's counsel that there would be some assistance if Mr. Klauber explained his role on, for example, a recent case that would give us the relevance. The purpose of this briefing again is in response to Councilmembers' suggestions and requests both in our ongoing conversations that evolve on a variety of issues and cases but also in the conversations with the Planning Board, informal conversations that we held with the Planning Board several weeks ago. What we added at that point is a better understanding or a review of the rules that may apply to the Planning Board from an ex parte perspective. So, rather than have this briefing in a more formal -- informal setting, I thought in conversation with the clerk that a more formal setting, televised, would be helpful to not just the Council as a refresher course but also would be helpful to the general public for whom at times their interactions with the zoning laws and regulations are more infrequent and therefore may be even more confusing than they might appear to us at times. So, that's the rationale for having this as a part of the Council meeting. And I appreciate the packet that was prepared by our staff, led by Mr. Faden on this issue and Ms. Carrier in her role and I note that the people's counsel and our other Hearing Examiner, Mr. Grossman, are also present and Kathleen Boucher, one of the other lead Council attorneys so that if we have questions for them they certainly are available as well. And Mr. Hanson is here as well from the County Attorney's Office. So, I will turn it over to you Mr. Faden and you can begin.

Michael Faden,

Thank you Madam President. Very briefly, I will give a little bit of an introduction to the ex parte doctrine and then turn it over first to Mr. Zyontz who will tell you essentially how Council staff deals with ex parte issues and coordinates with Councilmembers on them and then I will then turn to Ms. Carrier who will basically talk about what happens if there is an ex parte communication and what to do about it. The ex parte doctrine in this setting, in the setting of the Council's jurisdiction only applies to two types of rezoning actions, sectional map amendments and local map amendments. It also for the moment, but that will change as of October 14th applies to road closings and abandonments under Chapter 48 of the County Code. The Road Code revisions that you enacted a couple of months ago modified that part of the law to make road abandonments and closing still come before you on a record put together by a Hearing Officer in the Executive Branch and approved by the County Executive but you are not restricted to that record in making that decision. But, on the two zoning issues you are restricted to the record before you. These are what's called on the record proceedings. The packet before you has the two laws that apply to them on Circles 4 and 5 as well as the general ex parte provision, County Code section 19A15B which is shown on Circle 3. The basic purpose of the ex parte doctrine is

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fairness and even handedness. The idea is that in these on the record proceedings, each participant will be aware of everything each other participant has put before the decision makers. And so that if something is said to a decision maker, the other party has an opportunity to hear it, understand it and rebut it. This is different as you know from the general legislative process where basically anyone can say anything at any time and there's no requirement that everyone be informed of what you are told. The ex parte doctrine doesn't apply to land use legislation. It doesn't apply to zoning text amendments. It doesn't apply to master plans. It doesn't apply to anything regarding land use except local map amendments and sectional map amendments. Unless there's any questions about this introduction, I will kick it over to Mr. Zyontz.

Council President Praisner,

Why don't we go through the presentations and then I think it might kind of crystallize questions if there are any from Councilmembers. Jeff. Mr. Zyontz.

Jeff Zyontz,

Thank you. First of all, everybody should know that I am the Council's contact person on zoning and I get calls from almost all parties at one time or another in zoning cases and I respond to all questions. Those include from Council and Council staff on when you're getting what might be ex parte communication or not or whatever you wish to know about, I'm there to consult. I also consult with your staff sometimes when I know something is happening but mostly it comes from you and your staff down to me first. I don't make the call upstairs. I also talk to the attorneys and this gets to be an interesting situation when an attorney is about to file an application for a zoning case and says, gee, I'd like to meet with all the Councilmembers and if they tell me they're about to apply, I will tell them, gee, that's not such a good idea. Although the ex parte doesn't formally apply because it deals with when applications are filed, it's in the nature of lobbying a judge before the case is presented. So, I would say to them, if they want to note it, put everybody on notice, they can send something around that says I intend to file this and then they can file that piece of paper in the record. Just so everybody knows and the Councilmembers aren't surprised that there's a zoning case that they may or may not hear about. But I certainly advise them when asked not to go even before an application when they know an application is coming. If it's a general land use kind of conversation, gee, we're thinking about twenty things, kinds of things, well in advance of zoning, you're free to have any kinds of discussions that you would like. Certainly I get call from residents as well and mostly this occurs once the Hearing Examiner's report is out, which mean the record is closed most of the time when I get the call and there are questions about Council procedure and particularly, the requests for oral arguments and how is that made and how they can formulate that kind of discussion. And I try to answer all of those questions whenever I get them and as quickly as I can because they have ten days from the Hearing Examiner's date to request oral argument. So I try to be absolutely as timely as I can on those responses. Oral arguments itself is in a sense a exception to ex parte, if you will. It is a time that

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an interested party can say, gee, I have something to say directly to Council and I need to tell you something for the purposes of asking for oral argument. Well, I get those requests and consult with the Hearing Examiners to make sure there isn't off the record statements in the request for oral arguments so that everything that goes to the Council is on the record. On occasion, it hasn't occurred with this Council yet, but on occasion you will find some interesting memos that look like they came from the CIA. They will have redacted lines in them to strike out --.

Council President Praisner,
I appreciate that. FBI does that too. [laughter] CIA, NSA, everyone else.

Jeff Zyontz,
I don't rewrite. All I do is take out. And that hasn't occurred yet but certainly it could occur. All correspondence that comes into the Council, Council itself or the Council President goes through the legislative information services and lands on my desk first. If it says a zoning case number and they can identify it as a zoning case number, I get it first and I will redact anything that is off the record. It's not, I hope you don't consider it, that's not its intent, but certainly since I'm not familiar with the totality of the record, I go downstairs to the Hearing Examiners and say okay, let's look at this one. Sometimes I'll know enough about it to know that something is on or off the record but that's rarely the case. I consult downstairs on the redactions so every now and then you will see something a little bit odd. You haven't seen it yet. But again, -- you have and we try to, when we have the opportunity we advise both Council and residents that we will do that and we are perfectly capable of redacting those things outside of the record. We prefer that they don't do it to begin with because that way it looks like a document that has a lot of holes in it and it may not be as coherent as they would like it to be but we do do that. Of course my role is also on letting people know of the opinions being issued and the procedures for Council. But I think now Ms. Carrier will go through the sort of how to correct for ex parte and what do you do when it happens and also the procedures of the Board of Appeals.

Francoise Carrier,
Great. Ideally the Councilmembers if somebody wants to set up a meeting or approaches you informally to talk about a land use issue, you would remember where all of the pending zoning actions are and you would not have that conversation, that sometimes can't be helped. You won't remember it or they won't be specific enough and so you will be privy to information that is about a zoning case but is not taking place at the hearing or on the record. It's also possible that a staff member may meet with a constituent and not realize it's about a zoning case and then the staff member could convey information to the Councilmember. It's also an ex parte communication even if it's coming through a staff member, it's still information from outside the record which you have to disclose if you're going to rely upon it. The same thing with e-mails and letters. Ideally, some, you would see something is about land use and have somebody else read it first before you read it to make sure that it's not about a zoning case.

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That probably can't happen 100% of the time. But to tell you what to do if this happens, if you read something or hear something that you realize you shouldn't have, I'd like to first explain the difference between the evidentiary record and the administrative record. The evidentiary record is what you're permitted to rely upon. It's items that have been taken into evidence. There's also a concept of the administrative record which may include items of an administrative nature, items that are not substantive evidence about the case but it might be for instance a communication about a procedural matter that came in after the record was closed needs to go in the file in order to tell the full story but it's not part of the evidence before you. If you get an ex parte communication, you have to disclose it in some manner or recuse yourself from voting on that application. And how you do that depends on whether you want to rely on the information. If you're not planning to rely on it, then all you have to do is disclose it. If it was an oral communication you need to write something about it, write a memo describing what the substance of that communication was and it can be put into the administrative record. It doesn't have to be in the evidentiary record if you're not going to rely upon it. That would be helpful if the record has already been closed. That way it doesn't have to be reopened. You just submit something to the Hearing Examiner saying this is what I was privy to and am not going to rely on it in reaching a decision in this case. If it's something that you think the Council should be able to rely upon, then it needs to go into the evidentiary record. If the record is still open, that's very easy to do. You send it down to our office. If it's written, you just send it down with a brief cover memo saying I received this, please put it in the record. If it was oral again you write it up briefly in a memo and say I had this communication, please put this in the record. If the record is closed but the Hearing Examiner hasn't issued a report yet, it's still not so hard. You send it down, you ask the Hearing Examiner to reopen the evidentiary record. The Hearing Examiner will open the record, will issue a notice saying, we're opening the record to receive this information and they will give a certain amount of time for all interested parties to comment on what came in. If the Hearing Examiner has already issued a report and recommendation then it's more complicated because you have to ask the, you have to remand the case to the Hearing Examiner because it's no longer before the Hearing Examiner. It is now before the Council. So that involves more delay because you have to actually sit and take a vote and remand it and then we reopen the record for a comment period and resubmit the case to the Council. So those are the basic steps to cure a problem if you have an ex parte communication. The other thing I wanted to mention is that the Board of Appeals is also subject to ex parte communication rules, the same way that you are and the same way that I am which means that for instance, should a community member have a concern about a special exception case that they want to raise with a Councilmember, there's nothing that prohibits you from discussing it, but you, it would not be appropriate for a Councilmember to speak directly to a Board of Appeals member about it. You can put something into the record before the Board of Appeals. Many public agencies do. They will send a letter saying, you know, we understand this application is pending and we believe it should be granted or

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denied for the following reasons. You can do that in a written form and submit it into the record and the Board of Appeals can certainly consider it. Just private communications are not permitted because then the Board of Appeals member would be violating the ex parte rule. I think that Jeff wanted to add something about the Planning Board which has adopted its own rules.

Jeff Zyontz,
Yes.

Francoise Carrier,
About communications.

Jeff Zyontz,
Planning Board also has its own rules. They are both a County agency and a creature of the state. They are controlled by Article 28. They have their own authorities. Basically they are the operating agency for parks. They advise you on zoning and master plan matters and they are a regulatory agency for the purposes of preliminary plans, site plans, project plans. In their role as regulatory, they have ex parte rules as well. And it's somewhat similar to the Council. Any case before them is, they need to have the information on the record, not by private communication. In a similar way that Ms. Carrier talked about how you would communicate with the Planning Board, it's the same way you communicate with the Board of Appeals. If you have something to say, you can testify in public, you can write to them on the public record but again, they should-- they should note to you that if you had any conversation directly that they are barred by their own ex parte rules. They do publish their rules on their websites, although I would have some comments on that one as well. But they do indicate the situation.

Michael Faden,
Their rules are in this packet, the ex parte, the analogous to ex parte provisions are on Circles 33 and 34 but possibly more important is on Circle 31, the definition of application, which shows the proceedings that these rules apply to. So, these are what Jeff referred to as the regulatory parts of their jurisdiction, project plan, preliminary subdivision plan finding, pre-preliminary plan, site plan record plat, APF determination under Chapter 8, forest conversation plan and water quality plan. So all those are regulatory matters before the Planning Board.

Francoise Carrier,
They did not apply those rules to the matters that you or the Board of Appeals will decide where they're making a recommendation. Because they have made a sharp distinction between cases where they make a recommendation and cases where they are making a decision.

Council President Praisner,
Yeah, we're going to, I'm waiting for them to finish and then lights.

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Francoise Carrier,
I think we're done.

Council President Praisner,
Okay. Council Vice-President Knapp.

Councilmember Knapp,
Thank you Madam President. Thank you all for, thank you for the briefing and thank you for your time. I think it's an important issue that kind of comes up sporadically and so when it comes up, there are generally issues associated with it and then it goes away for lengths of time. I think in the last four years, there were three situations that I'm aware of that there were kind of breaches of ex parte communication which happened. I mean, I think that's an important thing to put out there, that you've got lots of people talking about lots of things and at least the three I'm aware of were completely benign. No one was trying to do anything untoward, it's just people didn't necessarily understand all of the elements. So, there were two that were e-mail communications, actually there were a series of e-mails in both cases where interested community residents sent us a bevy of e-mails and we being diligent we read our e-mails and all of a sudden you are now subject to having read something that was ex parte. Often times we don't know what's kind of out there and so I guess my question is, we have e-mail communication and then there are often times when people will go through our schedulers and have meetings set up and all of a sudden, you're having a meeting and you don't, you know meeting on something in Damascus. I represent Damascus. If someone in Damascus wants to meet, I'm generally going to meet with them. All of a sudden you're in the middle of something, and even in the middle of it you may not recognize what it is.

Francoise Carrier,
Right.

Councilmember Knapp,
How do we, on kind of more proactively understand or get a sense of what's out there pending potentially on materials that could be ex parte?

Council President Praisner,
Well, Francoise and I have had some conversations about how the Hearing Examiner and folks might help us with a piece of that and I don't know, Ms. Carrier, do you want to comment?

Francoise Carrier,
Absolutely. I think it was a good suggestion, I think it started with Marilyn, we've sort of gone back and forth about ways that we could effectively communicate without inundating you with too many pieces of paper or information that will not be given in a useful format. And I think where we've come down, at least to start

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with is every time an application is filed for rezoning, we will send a brief memo to the Council President who can distribute it to Councilmembers and it will say, we've received a zoning application, here's the property, here's the zone they're seeking, here's the name of their attorney and these are the nearby community associations.

Councilmember Knapp,
Okay.

Francoise Carrier,
That's the information we have at the time of filing. What we don't have at that point obviously is a list of people who are going to be interested from the community.

Councilmember Knapp,
And that's okay. At least if we even know broadly.

Francoise Carrier,
Right.

Councilmember Knapp,
What's out there and so we know, oh wait, there is something in Damascus I've got to pay attention to.

Francoise Carrier,
Right. Maybe it would ring a bell.

Councilmember Knapp,
Exactly.

Francoise Carrier,
That there was something on – Mill Road and so you would stop for just long enough to say, let me just look that up and then you can go and verify whether in fact there's a zoning case. And Jeff had a very good idea. You want to describe it?

Jeff Zyontz,
Well, certainly we can map these addresses that we get so that I can provide in some form convenient to the Council those cases out there. So, if you felt it easier to just look at a map, I can do that.

Councilmember Knapp,
I think that would be helpful. And I think that to the extent that those come over even if there was information that was sent around in our weekly packets as opposed to this information that kind of comes in as one more piece of paper. I think of it -- it gives it a little more, I don't know, I guess you'd, you're more likely

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to read it one Sunday night when you're going through your packet sometimes than given the stack of paper that comes into our office so that may be a way to do that too.

Council President Praisner,
On that point.

Councilmember Knapp,
Sure.

Council President Praisner,
I think there are two points I wanted to make, in our conversations, our e-mails back and forth about what ideas we might use to broaden the Council offices and that means every staff member within the office as well as the Councilmember because they are taking the appointments and processing the mail and the Councilmember is the one out in the community presumably.

Councilmember Knapp,
Right.

Council President Praisner,
So, that's why it has to be twofold. We talked about this. No matter how you define this, there is that point just before you get to the bridge that isn't part of the process. So for example, this is a filed application. It's not as folks just commented on earlier that appointment before the lawyer has filed. And there's the question about how far back you can reach prior to filing and what you know in your heart to be the facts of when you're going to come forward and when you schedule those appointments. You know, we could go back and say three months before then somebody four months before will schedule that meeting. No matter what you do. There are ways to game the structure but at least we can accommodate some of the creep that I think is associated with e-mails which is the issue we hit back at least five years ago initially when e-mails were coming in both directly to Councilmembers' e-mail accounts or to the offices' accounts that were not appropriate for a Councilmember to read by this context and how we deal with that is I think still a challenge. But the other piece of what you do with folks who want to make appointments for you when there's nothing filed, you know.

Councilmember Knapp,
Right.

Council President Praisner,
We still have to look at that.

Councilmember Knapp,

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Well and I guess I was struck by, I mean I think there's a perception on the part of whichever side of an argument it happened to be that someone is acting in an untoward way. And I guess the three cases I saw in the last four years it was purely people not knowing all the rules and just figuring they were advocating like they advocate for everything else. So I don't think anyone was trying to, I haven't witnessed that part as much as just making sure we have a good way to kind of have a red flag that will jog our memory to say, ooh, that looks like it's going to be a problem.

Francoise Carrier,

I haven't seen any instances in my time here where somebody was knowingly trying to, you know, have influence that they shouldn't have. It was all people who didn't know about the rule or didn't understand it.

Councilmember Knapp,

Yep. I have just three very specific questions. First, Jeff, in your presentation you talked about the request for oral argument and I guess my question there is when someone is making a request for oral argument the presentation that that person or people make is also confined to information that is already on the record?

Jeff Zyontz,

Correct.

Councilmember Knapp,

Okay. Francoise, in yours, you talked about you can reopen the record to put additional information in if there has been an ex parte communication. When the record is opened is it only opened for the instance to add that piece of information or once the record is open is it then potentially open for the introduction of other information as well?

Francoise Carrier,

If we're doing our job correctly it's opened for a specific purpose.

Councilmember Knapp,

Okay.

Francoise Carrier,

So, we will write a notice that says the record is open to allow in this information. A letter was received from Councilmember X stating, you know, describing communication about this case. A comment will be received from interested parties on this new submission until such and such date.

Councilmember Knapp,

Okay. And then my final question is you talked about submitting written information to the Board of Appeals and I assume also the Planning Board, we could do that.

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Francoise Carrier,
Sure.

Councilmember Knapp,
I was asked to participate in a Board of Appeals case, I don't know seven or eight months ago, in which I declined because I didn't think it was appropriate but are there instances where people in our capacity would actually sit and testify before the Board of Appeals or the Planning Board?

Francoise Carrier,
You know, I've never seen it happen. Today, if it's a special exception, it would be in front of me or one of my colleagues, the Board of Appeals doesn't conduct those hearings anymore.

Councilmember Knapp,
Right.

Francoise Carrier,
There is not a prohibition against it. I can tell you that, you know, I've been here six years, I've done a lot of special exceptions and zoning cases, I have never had an elected official attend in person. I have gotten letters. I've gotten letters from the governor, from the County Executive voicing an opinion on a case. I think that there's a public perception question that you might individually want to wrestle with. The presence of an elected official might be seen to be an effort to exert pressure in a way that a written document would not.

Councilmember Knapp,
Right.

Francoise Carrier,
Hearing Examiners are you know, we're pretty tough against pressure, but you know, there is still a public perception issue to think about.

Councilmember Knapp,
No, that's why I asked the question because I think it's important for people to understand that because that's why I didn't do it. I didn't see any good coming from it. In fact I thought it probably would hurt the case but I think it's important for people to understand that --.

Francoise Carrier,
Yeah.

Councilmember Knapp,
--There's that public perception piece.

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Francoise Carrier,
I think you made a good call.

Councilmember Knapp,
Okay. Thank you.

Council President Praisner,
My comment to community people and I don't know if Nancy wants to comment from her perspective having been both as a Planning Board member, my comment to community members is we will provide assistance in our office to explain the process, to provide materials to help with understanding the process much as one might expect and we have directed folks to the people's counsel as well but that I have assiduously avoided being in the position of even writing a letter of advocacy on one way or another. Because once you start down that road, my view is the question then becomes why this one and not that one. And I think it raises and can hurt in the long run and causes I think complexities that aren't helpful to that issue. I don't know if Mr. Klauber wanted to comment and I've invited Ms. Floreen to comment on that issue if she'd like, given your experience.

Councilmember Floreen,
Sure, I'd just say in my eight years on the Planning Board, this is between 1986 and 1994, I don't believe I ever received a call from an elected official about anything or saw, I'm trying to remember, I don't think we had much in the way of elected official engagement in most, in nearly anything. Occasionally in a very controversial neighborhood case elected officials would show up to sort of support the community, more in the state level but not at the Council level. It was the famous time Ed Muskie showed up to oppose the Corridor Cities, the Purple Line which was a memorable moment, but I think he was done in his service on congress. I would say that just to – and because of my experience as a land use attorney which I used to do, I am very careful when a constituent communicates with me about something and I grill them on what it is and if it's pending before someone, I say you need to, I offer suggestions as to who they may, they should, would most effectively communicate with. And I think the challenge for all or us is skewing the balance in terms of who's in charge on these issues because it's more community perception of the rules than, and as we get engaged they hope that we will solve their challenge and when we can't because we're not the final decision maker or are precluded by ex parte, I think we do disappoint people in a way that's not helpful to them and doesn't help them resolve their questions. So, when someone asks me about an issue -- I do say is this a case somewhere, has it been filed and try to get them to identify what is the source of their question and then say well, you're going to need to talk to the staff of such and such or Mr. Klauber or whoever because the decision will lay with whoever it is. But as I said on my time on the Planning Board, we did not receive, and I don't know about staff, but at least from the decision maker position that was not, certainly not in our experience.

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Council President Praisner,
Mr. Klauber, you wanted to comment before I go on to.

Marty Klauber,
Yes, being here since 1979 the amnesia of the past only, I have only recalled two instances of, one was a letter sent from a Councilmember to the Planning Board and one was a letter sent from a Councilmember to the Board of Appeals.

Council President Praisner,
Councilmember Leventhal.

Councilmember Leventhal,
Thank you Madam President. I really appreciate the scheduling of this discussion. It's a great refresher for all of us who have had it already and I suspect some of us are hearing it for the first time and it's really very, very useful. And I'm learning something new here even though I've read it before. I was under the impression that most of these ex parte rules emerged out of the code of Maryland and I see now that they really emerge out of the County Zoning Code.

Francoise Carrier,
The Ethics Code.

Councilmember Leventhal,
However, it would be helpful as we delve deeper into this to understand a little about the legislative history. Because it's my understanding that, well, first of all, let me just, what reading I've done about Montgomery County history and the establishment of the charter form of government and the move from County Commissioners to a County Council and then ultimately to a County Executive, all of these things were done with an overriding theme. And the overriding theme was good government depoliticize, sensitive decision making. And these are not new issues, the concern that elected officials have to raise money for their campaigns and they might raise money from people who benefit from decisions the Council makes is not an issue that emerged in the 21st century. It goes back many, many, many decades in the history of the County. And so I'd like some understanding about the legislative history here but my surmise without having done any other research is that this was a good government reform. That some, you know, clean and shiny Councilmember offered this with the intent of removing the politics from the land use process and as was said earlier, making sure that the key land use decisions involving specific parcels are made purely on the merits, everyone having equal access and removing special access for property owners who have presumably more significant resources and potentially greater access and ability to influence Councilmembers. So, just to be clear, I mean, my understanding is the reason this was done was to limit special access by property owners. And that's what I believe is the case. I'd like to see a little

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research into legislative history here so that when we now as we do frequently, you know, last week most recently, find ourselves in a situation where the rules are cumbersome, the rules are difficult and they erect all these barriers between ourselves and the people who elect us and the people who elect us are frustrated because they can't get access to us. It's helpful I think to have a dialogue with the public about why these things were created. Because my belief is that the reason they were created was to provide a level playing field again, I'm repeating myself, so the property owners don't have special access. And I just wonder if staff has any comment on that. I have another question when I'm done.

Francoise Carrier,

I expect that you're exactly right. I don't know the legislative history but that certainly appears to be the reason that rules like this are set up. It's the whole reason we have due process is so that the little guy has, you know, more or less a level playing field as much as we can create that.

Council President Praisner,

Mr. Klauber, you wanted to comment and then Mr. Faden.

Marty Klauber,

Yes, Montgomery County was the first County in the United States of America to have a Zoning Hearing Examiner system. The Zoning Hearing Examiner system took the Public Hearings away from you all and gave it to the successor, a wonderful woman in Montgomery County. The ex parte was the logical next step so that when you gave the authority to hold the hearings to the Hearing Examiner, it really was the Hearing Examiner compiling the record and the ex parte was stepped to the assurance to the public that all the -- that your authority to hold those hearings was safely ensconced in an objective office. That's the two parter. The first was the Hearing Examiner. The second was ex parte.

Michael Faden,

Just add that historically the ex parte concept long predates the Montgomery County land use process. It goes back at least to the 19th century in the judicial system, but its application to the land use process is for I think exactly the reasons that you suggested and these folks confirmed.

Councilmember Leventhal,

Thank you. Okay, I've got two other points I'd like to make. All of us are going to figure out on our own how to run our own offices and we don't have, you know we have the law, and we're governed by the law and we have the rules of procedure and we're governed by those, but in terms of what we as individuals do to respond to our own individual constituents, you know, I mean I'll just speak for myself, I've made those up, you know, week after week, I figure out some, you know, what makes sense to me and how I ought to do it and I work very hard at it as I know all my colleagues do. What I've found with respect to the Planning Board in particular is it just isn't worth trying to influence something that doesn't

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come before the County Council. That for one thing, you betray your own powerlessness because they really, they know their own ability to make decisions, they know exactly what the law vests in them and they probably won't listen to you so that, you know, if you rush in, I'm just speaking for myself, if you rush in as the champion of your constituents before an adjudicatory body that is not the County Council, two times out of three, maybe one time out of two but frequently you won't succeed. You won't get the constituents what they want and in the long run I don't think that builds your own reputation as a go getter or someone who gets things done. I have to reevaluate this all the time. I mean, we get these flurries of e-mails all the time from communities who are concerned about something pending before the Planning Board and the challenge is, because I as I know my colleagues do want to be very responsive. I want to answer my e-mail. I want to let people know that I'm listening to them, that I care about what they care about. But if it isn't pending before, if it is pending the County Council and it's ex parte, that's one thing. If it isn't pending before the County Council, for one thing you don't want to violate the Planning Board's ex parte rule or the Board of Appeals, but for anything thing, it isn't in your hands. You don't have the power to influence the outcome. And if you suggest that you do, if you want your constituents to think that you do, you may, you and they may be disappointed because really you don't, I mean the Planning Board has no reason whatsoever to listen to County Councilmembers on any of these matters. So, my own judgment has been look, to explain, I still answer the e-mail, but I explain this is where this is in the process. It is solely before the Planning Board at this point. It's not going to come before the County Council, if that's where it is. The third thing I wanted to just say, from last week's meeting and I know other similar situations, I do think it bears discussion, not here, can we improve on this? Now I understand that we have got the County Codes so we do have much greater ability. I this all this was in the regional district act so I'm being educated today and I appreciate it. So, there's a couple of questions and I don't think we're going to answer them today. We need in the next few months to bring back this question of who defends decisions of the Board of Appeals when they are appealed to the circuit court. We haven't resolved that.

Council President Praisner,
No.

Councilmember Leventhal,
And we have got deal with that. That's point one. Point two I think and Mr. Berliner, it was very apt last week and we still need to look at it. We do need to work with Mr. Klauber and understand his position. Are we making, and this is not in any way a personal judgment, we've got to institutionally reckon with, what is the role of the people's counsel? How, what do we want the people's counsel to do and how do we, there are going to be some expectations from the community that we can satisfy better, some we can't satisfy. And I don't, in my, I'm in my fifth year here, we haven't had that conversation so this is not in any way a judgment on Mr. Klauber's performance, it's an institutional comment that

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we need to be thinking about that more. And then the third piece is, you know, with respect to civic associations, I listened to what Ms. Carrier said that what we do when an applicant has filed an application is we notify the what I guess is just the party of record, whoever is the citizen's association who represents that area, but that's going to have a wide range of effectiveness. I mean, we all know, we all work with these civic associations. Some of them are really on the ball and in touch with their members and others are defunct, you know, so there's a wide range there. So, we ought to look at how, if there's a way and it may be through the office of the people's counsel that we engage the community more. Because what I think happens frequently is they don't learn about something until after the Hearing Examiner has issued his decision. The Hearing Examiner issues a decision that doesn't go the way the neighbors want it to go and then there's a tumult and a fury and a frenzy and by then the record's closed and there's nothing that can be done. So taking a look at are we effectively notifying interested parties and can we do a better job of that? So, those would be three areas that I think coming from this discussion, we're not going to resolve them today that we might want to continue to look at. Thank you Madam President.

Council President Praisner,

I think the Hearing Examiner may want to comment again about the notice process with civic associations because I think we always run the risk that there's always going to be someone who says I didn't know about it but, and this raises an issue when there aren't folks in opposition who testify as part of the record.

Francoise Carrier,
Right.

Council President Praisner,

It would be helpful at that point in the record to identify what notice was provided and maybe we can do a better job of who received notice and who may have approached the people's counsel or what role the people's counsel may have had in outreach once a case is filed. And we can talk about that issue further.

Francoise Carrier,

We provide mailed notice to adjoining and confronting homeowners and also to a number of civic groups in each case. There is a list of civic groups that have requested notice of every single zoning action that is filed regardless of where it is in the County. I couldn't get the names of them. But they are, mostly they are umbrella groups that have a constituency that is interest based rather than geographic. Some of them are County wide civic groups. So, they get notice of everything that we do and I believe also of all of the special exceptions. And geographically, there is a map that divide, that has sort of sectors of interest for each community association in the County and the staff looks and sees what, if the property, the property usually will fall within the sector of interest for several civic organizations. It may be in the southeastern corner for one. It may be smack in the middle for another. But there are usually overlapping community groups.

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So, we do send letters to all of those. What happens, one thing that happens not infrequently is that we get a call a week before the hearing from someone who says, I'm the new President of such and such group and the letter went to the old President and they didn't give it to me and we didn't know about this. You know, this is unfortunately something that's got to happen because the new President didn't give their address to Park and Planning which maintains the list and so the notice went to the person who was on the list. Sometimes this results in postponing a hearing which is always unfortunate but sometimes it's a necessary thing to do out of fairness. Sometimes it isn't because sometimes we investigate and we find that there were people who knew about it and they just didn't get their act together. Generally speaking a continuance like that will end up being granted whether it's two weeks or four weeks. You know, it depends on the situation. Most often we find that citizens groups, they may have sort of known about something but you know, they have lives to live. They are not spending all day sitting at a desk thinking about zoning cases or special exceptions and so they don't really start focusing until maybe a month before the hearing. And then they figure out that they have to educate themselves and they have to figure out who can come to the hearing and so they may not get their act together to participate that effectively. We also sometimes have people who just, no matter how many times you tell them, you need to get information on the record and to do that it has to come in before the hearing. No matter how many times you tell some people that, they just, they don't hear it or they don't absorb it. They're busy that week. Their kid has the flu. For whatever reason, they don't get things in and then we have the regrettable after the fact, gee, I want to tell you something now and some of those things there's no process we could possibly come up with that could stop them. You know, we are open to whatever kind of notice ideas there might be if there's other ways. We love to communicate. We're happy to have as many people who want to come to our hearings. So, if there are any other suggestion on how to get out more notice, we'll do it.

Council President Praisner,

I think that's the point that we have to, is a piece of Councilmember Leventhal's issue of how do we explore these issues both with working either proactively on a cycle to update the database at Park and Planning or whatever variety of ways, working with the civic organizations for suggestions as well as outreach that may occur. I want to get to the other Councilmembers but I know Mr. Klauber you want --.

Francoise Carrier,

Mr. Grossman whispered something to me that I should add. That we also by law are required to publish notice in two newspapers of every zoning case. You know, it's out there for whoever is reading those notices and there are big huge signs. The property on every public road that the property faces, they have to have an enormous sign and we do get large numbers of calls from those signs which generate, you know, people then get information. I think probably we get as many participants from the signs as we do from the mailed notice.

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Council President Praisner,
I actually think that's why we've talked about expanding the sign requirements. You know, and we've had different conversations at different times that have expanded the size of the sign or the sign requirements in certain cases, in certain issues.

Francoise Carrier,
Yeah.

Council President Praisner,
That are probably the most effective piece --.

Francoise Carrier,
They seem to be.

Council President Praisner,
Because that is in your face so to speak.

Francoise Carrier,
Right.

Council President Praisner,
As to something is going on on this parcel. Marty and then I want to call on Councilmember Elrich next.

Marty Klauber,
A lot of the associations and members have said well there's two Public Hearings. Do you really expect us to go to both of them? And it's very difficult to say yes you really have to knowing that these people are taking off work and that they do have doctors appointments and their life. And I try not to pick and choose. I have my own professional thoughts about which of the two hearings is more important but that's selfish. But it is a, one of the dilemmas that the organizations face.

Council President Praisner,
Councilmember Elrich.

Councilmember Elrich,
Couple of questions, comments. One is, early on when I came on here I made the mistake of looking at something. And I looked at it two different ways. I went out and looked at it on the site and I looked at a Google map. And I've got to say, you know, I read the report, I tried to discern what people were talking about from those little grainy black and white photos that were included in the report that were exhibits and I could not tell diddly about shadow, massing, anything else from that and I thought driving by a place that I go to on my way to work and just

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looking at it and then pulling up a Google map and saying what's this really look like in the real world, which is the kind of evidence you actually had presented in front of you, because I've seen the large maps, you know, all the, in the discussion somebody can say look at this, look at this. I don't have the benefit of any of that. What's in front of me doesn't look like what was in front of you and the ability to follow discussions to know what somebody was pointing at, I can't do. Now I know that I wasn't supposed to do that and henceforth I have not done that again but I don't think it was a bad thing to do and as long as I don't talk to somebody isn't there a way to let us get some kind of basic information?

Francoise Carrier,
I have one easy suggestion.

Councilmember Elrich,
Okay.

Francoise Carrier,
Which is that if you want to see the big versions, we will be happy to make those available to you.

Councilmember Elrich,
You have them here?

Francoise Carrier,
We keep them. We keep them forever in fact because they are part of the public land records that my office has custody over. So, we, everything that's in the report we have usually in a big size that will be clearer and easier to understand. We can make them available in our library. We can bring them up to your office. We can't let you take them out of the building but we can certainly let you see them if that would help you to understand. And I can certainly appreciate that the pictures, you know, we deal with 8 and a half by 11 pieces of paper. Occasionally we have a foldout but that's only for really important moments. We are bridging into color.

Councilmember Elrich,
Okay.

Francoise Carrier,
We've figured out now that there's color printers available. We can do that without breaking the budget. So, you will occasionally get a color map which I think can help. But anyway, we can make those available to you. The question of a site visit is, it's a complicated one. We discussed it yesterday and I discussed it also with Mr. Grossman. It is, the Hearing Examiners sometimes do a site visit. We have the ability to say on the record or put a memo in the record saying I did a site visit on such and such a day. I will not rely on anything seen in that as evidence in the case. It was merely to gain context for understanding the exhibits

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of record. Occasionally we see something that might be different and then we might have to say in our memo, it turns out that since the testimony was taken a bunch of trees have been cut down so now the lot next door is vacant as opposed to being a forest. That happened to me once and I had to actually put that into the record. A Councilmember does not have this same ability to do that because by the time you're looking at it, the record is closed. Also a Hearing Examiner is not a member or a deliberative body so there's no chance of sort of accidentally saying something to another decision maker. As an individual, I think it's easier for us to make a very clear demarcation on what we can rely on and what we can't. What we see on the site is merely to get to understand the exhibits. And it does help. There are times when I've been glad that I went to a site before a hearing because I can understand better and I can ask better questions about how the various maps relate to one another. I think it is a risky endeavor for a Councilmember to embark upon. To take site visits, I guess that's how I would put it and I'd be happy to let, I mean, I think that others may have also -- .

Councilmember Elrich,

So if something that was affected by this were to occur on 355, I should avoid driving up and down 355 because I might see it.

Francoise Carrier,

Well, [laughter]. You know, I wouldn't go to lengths to avoid driving by a site and if you see a site just remind yourself, this is context and that's fine but I'm not going to make my decision because it seems to me looking at this that in fact those houses are pretty close.

Councilmember Elrich,

Okay. You talk about opening the record if we were to receive an ex parte communication, is that ever a good thing?

Francoise Carrier,

It depends on your perspective.

Councilmember Elrich,

I mean, if you really felt, if you received an ex parte communication and the information in that communication seemed relevant, is it a good thing to ask that the record be reopened to include that?

Francoise Carrier,

There are two reasons I would say to ask that the record be opened.

Council President Praisner,

Well, but if he received an ex parte communication, the record has to be opened.

Francoise Carrier,

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Not necessarily.

Council President Praisner,
If it was --.

Francoise Carrier,
He can disclose it and say he's not going to rely upon it. As long as he's not going to rely on it, it can just go in administratively. But there are two reasons why you want to open the record. One, if you think it's good information and you think that people should rely on it, it should go in the record and it's definitely worth reopening it. Two, if you're think that you're not going to be able to get yourself not to rely on it because now it's in your head.

Councilmember Elrich,
Right.

Francoise Carrier,
And you know it's relevant well then you really have no choice. There's only one sensible alternative which is to say please reopen the record. And if we have issued our report and you have to do a remand, there's some time lost involved. The applicant will undoubtedly be disappointed, they don't, they never want delay, but, you know, things happen and again if one of those two reasons then it's worth it. You've got information that should be considered, it's worth doing a remand. If it's just reopening the record that's only a loss of a couple of weeks. It's not that big a deal. If we haven't issued the report yet, we send out a notice, we give ten days for comment and then we can issue our report so it's not a big deal.

Councilmember Elrich,
Third question. If somebody asks you a process question rather than a substance question and somebody wanted me to explain what the process is.

Francoise Carrier,
You're allowed to do that.

Councilmember Elrich,
I can do that.

Francoise Carrier,
Ex parte communication rule only applies to the substance of the case.

Councilmember Elrich,
Okay.

Francoise Carrier,
Something that goes to the merits of the case.

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Councilmember Elrich,

So if I were, if I were to explain, you need to do all of these things, if you don't do these things it will not be on the record.

Francoise Carrier,

You can tell them that.

Councilmember Elrich,

I can tell them that.

Francoise Carrier,

You just can't let them tell you why they, what their opinion is on the matter. I have a lot of conversations with people where I have to stop them and say you know I'm sorry, you can't, I can't let you tell me what your thoughts are about this case. I'm happy to explain the process to you. If you have questions about how to participate, I can answer those but I cut them off in mid sentence if I need to because a lot of times they just want to vent.

Council President Praisner,

But I think the question also relates to if someone is saying something like the conditions nearby, you want, I would assume what you would say is stop.

Francoise Carrier,

Yes.

Council President Praisner,

I can't discuss the substance.

Francoise Carrier,

Yes.

Council President Praisner,

The process requires if you want to discuss this that you do it through the record.

Francoise Carrier,

Yes.

Council President Praisner,

Not that you say you need to raise this this way.

Francoise Carrier,

No, I --.

Council President Praisner,

Because you can't talk about the substance. You can only talk about the process.

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Francoise Carrier,

Yes. I will stop them and say I can't discuss the neighborhood with you. We'd be glad to have your information in the record and here is how to get it in the record. I also typically refer them to Mr. Klauber because he has more freedom to discuss things than I do. And you know, people can have a conversation without getting interrupted so much and you know, it's just a lot easier.

Marty Klauber,

And I just want to supplement that. If in talking to your constituents, you start to feel a little uncomfortable, and I don't know what that means but you all do, send them to me, please.

Councilmember Elrich,

Which gets to my last point I want to make. I just want to tag on to what, something that George and Marilyn both addressed. I think that it's correct to say that we have minimized special access but I think there's still advantaged access. And clearly the ability of one party to bring to bear tons of money on experts and such is different than the ability of a few neighbors to get together and provide countervailing evidence and studies. And it's exacerbated I think by comments that Mr. Klauber previously made about the difficulty of finding anybody now who will either do traffic or planning work for citizens because that may well impact on their ability to get work elsewhere. So it seems to me that we do need to address not just special access, now we have to address the advantage access. I think the Council thought it was a good idea to create the people's counsel, the thought was this would help level the playing field. It may have helped level the playing field but it hasn't leveled the playing field and I don't think you can ever make it exactly equal. Money is always going to be able to buy a lot more than the County could ever throw at every citizen group that wanted to help get assistance from the County. But we can certainly make it more level and I'm interested in what we can do to deal with mitigating some of the advantages that money buys in this process.

Council President Praisner,

I think those are very good points and speak to the assistance questions and support and the, in the context of the people's counsel but perhaps not exclusively. We have two other Councilmembers who want to comment. Councilmember Berliner. Three.

Councilmember Berliner,

A few comments and a few questions if I could. One on the ex parte issue and its role and its origin, if you will, as one who is a regulatory lawyer and works before administrative agencies every day, I deal with the ex parte issue every day particularly as it relates to utilities that are going before state commissions and saying this is how we'd like this case to be resolved. And in many instances the ex parte rules are designed to ensure transparency so that there aren't hidden conversations. That the conversations are "on the record" and then that can be

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then responded to appropriately. And in many instances you will see an ex parte notice that then allows the other side to claim equal time so ex parte serves lots of different purposes but a big chunk of it is transparency in the process and ensuring that if people like ourselves decide to get involved it isn't through a phone call. It is through a formal submission that all the parties then see and are able to respond to which then puts us on the same playing field as any other party notwithstanding our exalted status, if you will. But I just wanted to clarify that that's a fundamental purpose with respect to the ex parte rules. I appreciate my colleagues' observations with respect to the function of the people's counsel and whether or not as currently configured, it is serving the function that we may eventually hope it will serve. During my campaign I pledged to introduce legislation which would provide more resources for that office in order to make it an advocate for communities that are affected by development. Not simply a means by which people get information and how they can more effectively participate. I've decided not to go forward with that legislation in lieu of the OLO report that I had requested and that this Council has approved and which we will hear back from OLO as to whether or not it is in fact appropriate for us to revisit that fundamental question of whether or not we have provided the best means by which our community can have a level playing field in fact in the process. So I do look forward to that. With respect to the Planning Board issue, I find that the hardest. The Hearing Examiner sets of issues seem to me to be real clear. We are the court of appeals, if you will, with respect to the hearing board, Hearing Examiners as I perceive it. We are the ultimate decision maker and therefore we have to be absolutely clean in terms of those communications. The Planning Board I feel is different because we are not the decision maker. They are an independent regulatory body and we may individually decide how we are going to relate to the Planning Board on matters that have our constituency going crazy. And when they beseech us to get involved and say, gosh would you do something, would you write a letter to the Planning Board on our behalf? I'm more inclined to support my constituency when I conclude that my constituency has a point of view that I think is important. I appreciate it's a slippery slope and I don't know how to deal with that. And I also appreciate that the Planning Board can blow me off and say I'm sorry as they could blow off the community. But I haven't gotten to a comfortable place on that and I appreciate that each of us go through different processes in coming to that conclusion. Jeff, did you want to interject?

Jeff Zyontz,

If you want me. Where angels fear to tread here. Certainly, I never tell Councilmembers or the Council the edges of their priorities or prerequisites as it were. But Park and Planning is a state creature that has state authority to do things. As Councilmember Leventhal appropriately pointed out, they are an independent body that is free to listen to that which it thinks is appropriate. It is your political judgment though on getting involved in an independent board where you appoint the Planning Board members and you approve their budget. So at

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what point does your influence make it more political than independent and that is a judgment call that you have to make.

Councilmember Berliner,

And once upon a time I worked for a United States senator who was on the Energy and Natural Resources Committee. Energy and Natural Resources Committee oversees the Federal Energy Regulatory Commission and they basically make the appointments. And we had the question on a matter that was very important to our home state as to whether or not he would literally intervene in a case before the Federal Energy Regulatory Commission and in fact, he did. And many members do intervene when they, the senate, the congress approves the budget. They appoint these individuals. Now, do they do it in every case? No. But do they do it in cases that are of paramount concern to their constituency? Yeah. They do. So I do understand that it isn't clean. But I also am very respectful of the fact that it is an independent body and that they do have a bunch of evidence to look at. But I am struggling with where it becomes too much and inappropriate and I guess I have concluded that in certain instances that if I put my views on the record like everybody else and allow the developer or anybody else the opportunity to say are you kidding me, he's just, he's wrong, you shouldn't listen to that point of view then I think that's where I'm going to end up on a number of occasions. Go ahead Jeff.

Jeff Zyontz,

Certainly, I think it's absolutely clear that you have the authority and the responsibility to tell the Planning Board the rules under which they decide things. You adopt the zoning ordinance. You adopt the subdivision rules. You adopt the site plan ordinance as well. You have actually approved by regulation their rules of procedure. So you have opportunities to take control of the master controls of what they do.

Councilmember Berliner,

I understand I have opportunities to deal with the process.

Jeff Zyontz,

The question is when you get involved in an individual case.

Council President Praisner,

I think, if I may interject, the Council establishes procedures and directives and guidelines for the Planning Board. The question I think that we're talking about is an individual Councilmember which is a little different than a Councilmember who does that independently and individually, it's the whether you're one of nine people who direct the Planning Board or one-ninth of the direction of the Planning Board and I'd like to think of us as one-ninth, not one of nine when it comes to directing the Planning Board.

Councilmember Berliner,

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Could I have a --.

Council President Praisner,
Yes.

Councilmember Berliner,
Let me just ask some specific questions because I confess, Board of Appeals issues, they don't come before us do they? So we never get involved in Board of Appeals unless we want to if you will participate with a formal submission on behalf of a constituent if you will in the same way that we're talking about the Planning Board.

Francoise Carrier,
Just like the Planning Board.

Councilmember Berliner,
We have not, it does not come before us.

Francoise Carrier,
Never.

Unidentified
Right.

Councilmember Berliner,
Hearing Examiner, your work, does the full body of your work come before us?
Anything?

Francoise Carrier,
No.

Councilmember Berliner,
Okay. What portion comes before us?

Francoise Carrier,
Only the zoning cases.

Councilmember Berliner,
Okay.

Francoise Carrier,
And development plan amendments which are smaller in number than the special exceptions although they probably take close to the same amount of time because they tend to be more complex.

Councilmember Berliner,

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Got it. Special exceptions which would be a zoning variance kind of a case.

Francoise Carrier,
No, special exceptions are decided by the Board of Appeals. They are akin to a conditional use permit.

Councilmember Berliner,
Okay.

Francoise Carrier,
There's a long list of uses that --.

Councilmember Berliner,
But that goes from you to them, to the Board of Appeals?

Francoise Carrier,
To the Board of Appeals.

Councilmember Berliner,
Got it.

Francoise Carrier,
Correct.

Councilmember Berliner,
Alright, and the other goes from you to us?

Francoise Carrier,
Right. We also take referrals from the Office of Human Rights in which case our recommendation goes to the Office of Human Rights, the case review board and they make a decision.

Councilmember Berliner,
Okay. The road abandonment issue comes before, when there's a road abandonment that comes before us. My understanding was that in the Road Code Bill we may have made changes with respect to that previously had been an ex parte matter, now when there's a road abandonment before us, they are free to, all parties are free to contact us and we are free to have conversation. Is that, my understanding is --. Once the road goes into effect -- .

Michael Faden,
As of October 14th.

Councilmember Berliner,
As of October 14th.

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Michael Faden,

Let me give you a very brief history. Up until about ten years ago road abandonments and closings for real roads, not paper roads that were never used, were totally on the record proceedings. An Executive Hearing Officer creates the record which the Executive then makes a recommendation on to you. About ten years ago the Council amended the law on staff recommendations to make it more of a modified ex parte proceeding by specifically allowing: A, site visit by Councilmembers and B, Councilmembers to bring more evidence into the record subject to the parties' review. In the Road Code Bill that you've just enacted that was -- this always the chance of -- there still is a record compiled by the Executive Hearing Officer which the Executive sends a recommendation on to you but the Councilmembers are directed to consider that record but the decision is not solely on that record.

Councilmember Berliner,
Now, I have.

Michael Faden,

That takes effect as of October 14th, anything the Council acts on starting October 14th which means basically anything that is before you now is not likely to get acted on by October 14th so the new rules would apply to it.

Councilmember Berliner,

We have got a curious situation, suburban hospital in which they will be having I believe matters going before the Hearing Examiner and a proposed road abandonment. With respect to the road abandonment, it seems to me that it is inextricably linked if you will to the issues that will be going before the Hearing Examiner.

Francoise Carrier,

But that's in the context of the special exception. They currently have a modification pending to their special exception and they are planning another modification submission at some point with the -- expansion.

Council President Praisner,

But you're already having hearings aren't you?

Francoise Carrier,

I've already conducted two hearings in the pending modification and I look forward with great anticipation to the big one. We all do. Planning to clear several months of my calendar -- .

Unidentified

And years of your life.

Francoise Carrier,

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To deal with it. But that will not come before the Council. That will go before the Board of Appeals.

Councilmember Berliner,
Okay.

Francoise Carrier,
So you don't have to worry about.

Councilmember Berliner,
So, I can have --.

Francoise Carrier,
Unless they have a rezoning in mind that I haven't heard about.

Councilmember Berliner,
This is important. So, it is a rezoning.

Francoise Carrier,
Right.

Councilmember Berliner,
So, with respect to the matters that will come before you, they will then go to the -
-.

Francoise Carrier,
Board of Appeals.

Councilmember Berliner,
Board of appeals.

Francoise Carrier,
Correct.

Councilmember Berliner,
So I can feel free to have conversations with respect to the road abandonment issue even though it may be inextricably linked to the larger question without fear of ex parte communication?

Francoise Carrier,
Yes.

Marty Klauber,
With a little caveat. One or more of the parties may wish to quote a Council person's discussions that they had and they will use that to make whatever case -- .

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Councilmember Berliner,
Nobody quotes me.

Marty Klauber,
My mother always wanted me to be a historian -- .

Council President Praisner,
I'm sorry Marty, I'm going to cut you off unless it's specifically to the issue Councilmember Berliner asked because we have three Councilmembers who are running a little behind. And we are keeping the County Executive waiting. So, Councilmember Andrews.

Councilmember Andrews,
Thank you Madam President. Thank you for putting this together. I think it's been very useful. I don't remember this being done in recent years and I think that given the decades of legal talent before us, we should capture this moment and make it available on a DVD to people who come before, for anyone who would want it and I don't know how many would but there certainly will be someone out there who would benefit and might want it as well, people who come before the Hearing Examiner might have this given out with the application, you know, that this is a pretty good summary of the rules and procedures. And I think since we've got, you know, a Hearing Examiner represented, we've got legal staff from the Council, we've got the people's counsel, we've got context that was very helpful provided by Councilmember Leventhal about how this all came about, what's the purpose for these various rules and procedures. I think it's a useful thing. And so I think we should put a DVD together and make it available through the agencies to people since I don't think we're going to get you guys to go out on the road and do this regularly. Let me also say, I found the office of the people's counsel very helpful in being able to give constituents an idea of how to put the best foot forward, you know, what land they're navigating this new foreign land in terms of procedure and how to make their best case and what they need to do, when they need to do it and what they can say, when. So I have found that to be very helpful.

Council President Praisner,
Thank you. Councilmember Trachtenberg.

Councilmember Trachtenberg,
Again I want to echo what Councilmember Andrews stated about the usefulness of the exercise here this morning. For me it's been very enlightening and underscores in my mind why the course of action I decided to take a few months back was to be cautious because I tend to be probing and when people start appearing at events and asking me about zoning text amendments and the like, I direct everyone to staff almost immediately because I have always felt from the beginning that by asking those probing questions that's exactly how you could be

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getting yourself into some trouble. I just really have one thing that I wanted to clarify, which is where do people go online, say community members, to identify schedule and process? Is there some mechanism -- I have to admit I don't know this. But it would seem to me that that would be one thing we could do to improve the knowledge base beyond the fact that there are folks clearly that they can call.

Francoise Carrier,
You mean with regards to rezoning cases?

Councilmember Trachtenberg,
Yes.

Francoise Carrier,
Our website has a calendar posted.

Councilmember Trachtenberg,
Okay.

Francoise Carrier,
And it's updated every week so people can always find out the date of a hearing. There's also descriptions of each case so they can figure out which case number it is they might be interested in. I can't recall whether we have anything about how to participate on our website. It would be a very good idea. If we don't have it now I think we can certainly add it. I mean that's easy enough to do.

Michael Faden,
The materials in your packet are the materials on how to participate on the Planning Board's website which were done in cooperation with Mr. Klauber. They are somewhat general but they are a starting point.

Councilmember Trachtenberg,
Is there a way maybe to merge them and basically give people links?

Council President Praisner,
Just link them.

Councilmember Trachtenberg,
Exactly. I mean that's just what I'm going to suggest that that would be a very efficient way of making sure that people, you know access the documents.

Marty Klauber,
The PHED Committee wanted that done.

Councilmember Leventhal,
There is something on the Council's website.

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Council President Praisner,
No the Council, we meant on the Board of Appeals.

Councilmember Trachtenberg,
Yeah, I know it's on the Council page.

Council President Praisner,
I think Duchy's referring to the Hearing Examiner and the Board of Appeals.

Councilmember Trachtenberg,
Exactly. [MULTIPLE SPEAKERS] A link to the Council page but --. [MULTIPLE SPEAKERS] Yeah, exactly.

Council President Praisner,
Good point. Anything else? Councilmember Floreen.

Councilmember Floreen,
Thank you Madam Chair. I mean, I've been involved in this sort of activity for over 20 years now and I think it's really kind of a cautionary tale for us because our residents are trying to be engaged and as you know the zoning ordinance has week by week and we're all guilty of this, have made it even more incomprehensible than it ever was before with all our best efforts and I think we really do owe the public a better job of making this information more accessible. You have got to go to the Planning Board or the Hearing Examiner or the Council under which circumstance is when? What is the best choice of the use of your time? Where can you be more effective? How can you get access to the information? How do you use the term LATR? The kinds of things that we impose both on the development community and on the citizenry to understand and become effectively engaged in. And I really, I know that bit by bit we have tried to provide advice to our residents in this regard. Everybody has a pamphlet of one sort. We finally I think last year got on our site some tips. I send them out routinely to people as to how to become engaged. But I do think we need to make this a Council obligation because we are in charge of all of this, to put some of this together in a more comprehensive fashion so something that explains it not just by reference to other equally complicated sections of our code, but something that is more understandable and accessible so that people at least will be somewhat less frustrated than they currently are. Advice as to becoming engaged very early. Advice which I'm sure Marty provides, talking to staff, getting information. How do you find out what the exact rules are for the particular issue? I don't think we're there yet and I think given our resources, the resources at our disposal, I don't think what we have gotten on our website yet is sufficient to really help people become engaged. Mr. Klauber is often the subject of attacks because he doesn't make the case for them. Mr. Klauber's job is to advise people as to how to make their own cases and frankly I would say you don't need an expert to ask a good question at a hearing. But the question is educating our community as to how to go about positioning themselves in that

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regard. And I think we -- it's incumbent upon us and our staffs I think to provide better resources in this regard. So Ms. Praisner, maybe we could bring that back to the PHED Committee and.

Council President Praisner,
I already have it on the list.

Councilmember Floreen,
[MULTIPLE VOICES] Following up on Duchy's point, because I do think that's the best thing that we could do for folks. In terms of not just links, but some advice as to effective participation. We've done a little bit but it's not enough. We can't force people to read it but we certainly can -- .

Council President Praisner,
Make it easier to read.

Councilmember Floreen,
Make it easier to appreciate the labyrinth of rules, regulations and the relationship between them all that some of our residents are faced with and I would also suggest that we see if we can use some of the civics groups as well to make that information available to their, the umbrella groups can make that information available to their members. And perhaps do a special mailing to community groups to at least make -- get that information in front of them.
Thanks.

Council President Praisner,
Thank you. Councilmember Berliner.

Councilmember Berliner,
Just a real world example of how what Councilmember Floreen was speaking of in terms of the inadequacy of the current process to inform the community. There is a proposal pending or will be pending before Park and Planning that is very significant for downtown Bethesda. And there, the community really didn't know what the nature of the proposal was. So we did something that was fairly unusual which is that we hosted a public forum in which we invited the developer to come in and share with the community on a Saturday morning, a beautiful Saturday morning what they were proposing. I expected that we would have five, ten of the normal suspects show up and grill the developer. We had over 100 people. Standing room only for two hours saying, okay, what is this about? What are you trying to do? How will it affect us? How big will it be? And that process was incredibly important to this community in order to allow them to be more effective before Park and Planning eventually. So, I do feel that there is much further ways that we can go collectively to ensure that our community is informed enough so that they can participate effectively in the processes that we've established.

Council President Praisner,

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That's a good point. I think both of those points from a standpoint of outreach processes. I think perhaps Councilmembers may not be familiar what other Councilmembers have done to either encourage the developers to hold meetings or to work with civic associations so they might hold meetings in the public and to help people understand the process. Ms. Carrier wanted to make a comment.

Francoise Carrier,

Just a very brief one. I was reflecting on Mr. Elrich's concern about having access to the exhibits. Another thing we can do is actually bring them up here on the day the Council is considering a case. We can, you know, if there are three or four things in the report that one of the Councilmembers feel would be helpful to see in full size, we can have them up here and we can point to things, you can ask questions and we can show you on the map where things are.

Council President Praisner,

Okay, what we're going to do as a follow-up for this just to remind folks is one, we're looking at better notice to the Council offices of pending cases by working with the Hearing Examiner to make sure that you get the kind of information that specifically gives you the general information about a case that has been filed. And we'll continue to work on refining that information once folks begin to see that. And I would urge the confidential aides to the extent that material becomes familiar in your offices to get back to my aide to talk about whatever feedback or reactions you have about that. We'll talk with, as we have indicated with the Hearing Examiner about bringing the items here that are major items for when the Council considers the case to act so that there's material for us. We will continue to have conversations with the people's counsel about outreach and education and we'll work on the website and tips kinds of materials as well. Individual Councilmembers who may have thoughts, I guess as I reviewed the Planning Commission's procedures they are very comprehensive but I also found them very confusing potentially and maybe we need to look at how you access information and how you package and present materials. So we will follow up with all of those. As I said, this was in response to Councilmembers requests and comments and conversations that I've had with staff about concerns about not just the Councilmembers feeling more comfortable about the processes but also by using it in this format, having the public have a broader opportunity to understand both the rationale and the intricacies of our approach. We are now scheduled to go into closed session to consider matters related to upcoming collective bargaining agreements and I would like a motion under article 105-8(a)(9).

Councilmember Knapp,

So moved.

Council President Praisner,

Is there a motion?

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Councilmember Ervin,
Second.

Council President Praisner,
Vice-President Knapp, seconded by Councilmember Ervin I believe I heard. All in favor of the motion to go into closed session? Councilmembers Elrich and Floreen, are you voting? Okay, that is unanimous. We will be back at 1:30 for the Public Hearing. Thank you. Please, Councilmembers report to the 6th floor front conference room immediately.

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President Praisner,

Good afternoon, ladies and gentlemen. This is a public hearing on a resolution regarding Spending Affordability Guidelines for the FY09 Capital Budget and FY09-14 Capital Improvements Program. The Management of Fiscal Policy Committee work session is tentatively scheduled for September 24, at 9:30 a.m. The record will close at the conclusion of the hearing. Before beginning your presentation, please state your name and address clearly for the record, and spell any unusual names. Actually we have only two speakers this afternoon; Jacqueline Carter for the County Executive and Michael Riley for the Montgomery County Planning Board. Ms. Carter, you are first.

Ms. Carter,

My name is Jacqueline Carter with the Office of Management and Budget. I'm here to testify on behalf of the County Executive and present his recommendations on Spending Affordability Guidelines for the FY09-14 period. The County Executive recommends that the Council adopt spending affordability guidelines for County bonds as displayed in the attached Debt Capacity Analysis scenario with \$300 million in bonds planned for issuance each year of the FY09-14 period, for a total of \$1.8 billion for the six-year period. This represents an increase of \$150 million or approximately 9.1% from our currently approved spending guidelines. The County Executive concludes that these amounts are affordable by our taxpayers as supported by the standard affordability indicators in the Debt Capacity Analysis. In consideration of affordable debt levels, we need to take into account the significant reliance that the County places on State and Federal funding for certain projects; especially in school construction and modernization. Should these sources of funds be reduced, we would even need more County finances to meet the shortfall or would have to adopt stringent measures to cut or defer planned expenditures. This potential exposure, in addition to community expectations for project delivery on schedule, indicates we should be very careful at this early stage in our planning not to overextend our capacity. In summary, the County Executive recommends that we issue \$300 million annually in support of our Capital Investment requirements. He recommends against higher levels at this time because of the constraints that higher debt service levels will place on future Operating Budgets and the possibility of having to meet shortfalls in outside funding sources. For Park and Planning bonds, the Executive recommends \$4 million annually and \$24 million for the six-year period. This recommendation is consistent with protecting the Capital Investment in our parks and extending the current Debt Management

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Plan. Thank you for your consideration of the County Executive's views. Executive Branch staff will be available to assist you in Council work sessions.

President Praisner,
Thank you. Mr. Riley.

Mr. Riley,

Good afternoon. My name's Mike Riley. I'm the Acting Deputy Director of Parks for the Montgomery County Department of Parks. I'm here today to ask that the Council increase the Spending Affordability Guideline for Park and Planning bonds from \$4 million to \$5 million per year, or \$30 million for the six-year CIP. The Commission secretary/treasurer has reviewed our recommendation and has determined that a revised guideline to \$5 million is affordable. At \$5 million a year our ratio of debt service payments to General Fund Expenditures would be only about 5.5% for fiscal year '09 and would remain well below our recommended 10% guideline for each of the six years, even factoring in modest increases in future years. A \$1 million increase that our SAG from the current limit of \$4 to \$5 million it would result in approximately \$100,000 a year in debt service to our park fund. Although SAG limits are based on affordability rather than need, I would like to offer that there is a need. We currently have 305 local neighborhood parks that are improve or renovated by park bonds as opposed to the Regional Recreation and Stream Valley parks that compete for a relatively small share of the general obligation bonds that Jackie just spoke to you about. Many of these local parks were built in the 60's, 70's and 80's, and have facilities that are reaching the end of their lifecycle. And also many of them need comprehensive review because communities' needs have changed, and simply replacing or repairing the park the way it is doesn't meet the need. With the current SAG of \$4 million a year, it would be difficult to keep pace with need of local and urban park renovations. Approximately \$2.6 million of SAG goes to recurring level of effort projects like PLAR - Plan Lifecycle Asset Replacement, so the balance is available to spend on either new parks or comprehensive renovations that require their own PDF. The current SAG of \$4 million would leave only about \$1.4 million annually for such projects, and we are finding that comprehensive renovations of some of our older urban and local parks can cost as much as \$2 million or \$3 million. Our ongoing infrastructure condition assessment project is confirming that we are not adequately funded to keep pace with PLAR-type replacements. A major portion of the citizen testimony at the Planning Board received during its hearing on the CIP pointed to the need and demand for local park improvements. So we ask the Council approve a \$5 million Park and Planning Bond SAG. We believe it is affordable and needed. Thank you for the opportunity to testify.

President Praisner,
Thank you very much. There are no questions, and this concludes that public hearing. Good afternoon, ladies and gentlemen, this is a public hearing on Expedited Bill 20-07 Bond Authorization, which would authorize the County to

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issue certain bonds. Action is scheduled in legislature session following the hearings. There are no speakers for this item, and I would entertain in motion to - a legislative session to approve the expedited bill. Councilmember Andrews. Is there a second? Councilmember Trachtenberg. Roll call vote, Madam Clerk.

Council Clerk,
Mr. Elrich.

Councilmember Elrich,
Yes.

Council Clerk,
Ms. Trachtenberg.

Councilmember Trachtenberg,
Yes.

Council Clerk,
Mr. Leventhal.

Councilmember Leventhal,
Yes.

Council Clerk,
Mr. Andrews.

Councilmember Andrews,
Yes.

Council Clerk,
Mr. Knapp.

Vice President Knapp,
Yes.

Council Clerk,
Ms. Praisner.

President Praisner,
Yes. And as an expedited bill requires six votes, there are the six votes to pass the legislation. We are in recess until this evening at 7:30 when we will have a public hearing on Bill 19-07 in this room. Yes, some issue?

Chuck Sherer,
There are two actions.

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President Praisner,

Okay, I didn't have -- the other two on that item? Okay. All right, so the resolutions need to be adopted. Can we do one motion on both resolutions? So there's a motion to adopt the resolutions. Second by Councilmember Andrews. The motion made by Councilmember Trachtenberg. This does not require a roll call vote. All in favor of adoption of the resolutions; that is unanimous among those present. I'm sorry, that's what happens when you don't -- when you carry your agenda downstairs. Yes?

Council Clerk,

There is one more item, the approval of the legislative journal -- we need approval of the legislative journal for July 31, 2007.

President Praisner,

Thank you. Councilmember Leventhal has moved, and Councilmember Elrich has seconded approval of the legislative journal. All in favor; that is unanimous among those present. Thank you for making and correcting all the Council President's misses. Thank you.